

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

Borrego Springs, CA

United States Gypsum Company 1/

Employer

and

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542,

International Brotherhood of Teamsters, AFL-CIO 2/

Petitioner

Case 17-RC-12149

(formerly 21-RC-20549)

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time employees employed by the Employer at its facility located at 7801 Split Mountain Road, Borrego Springs, California, EXCLUDING office clerical employees, guards, professional employees, supervisors as defined by the Act, railroad maintenance employees, railroad track employees, railroad operators, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 542, International Brotherhood of
Teamsters, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 21 who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 21 Office, 888 South Figueroa Street - 9th Floor, Los Angeles, CA 90017-5449 on or before **December 26, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 2, 2003**.

Dated December 19, 2002

at Overland Park, Kansas

Regional Director, Region 17

1/ The name of the Employer appears as amended at the hearing.

2/ The name of the Petitioner appears as amended at the hearing.

3/The Employer, a Delaware corporation, is engaged in the production of construction and agricultural products at various facilities in the United States, including a mill and a production plant located at 3810 West Evan Hewes Highway, Plaster City, California (the Plaster City facility) and a quarry located at 7801 Split Mountain Road, Borrego Springs, California (the Quarry), the only two locations involved.

4/ The Petitioner seeks an election in a bargaining unit comprised of the approximately 25 employees employed at the Quarry. These employees are in the following job classifications: quarry operator (19 employees), quarry maintenance employee (5 employees), and quarry electrician (1 employee).

The Employer contends that the appropriate bargaining unit must include employees employed at the Plaster City facility located approximately 25 miles from the Quarry because of the functional integration of the two facilities and the close community of interest of the employees who work at the facilities. Thus, the Employer would include in the bargaining unit approximately 125 additional employees in the following job classifications: mill operator (27 employees), mill maintenance mechanic (18 employees), mill packing employee (4 employees), plant engineering electrician (20 employees), plant engineering maintenance employee (18 employees), plant engineering programmer (4 employees), quality technician (9 employees), production line 1 maintenance employee (10 employees), production line 3 maintenance employee (7 employees), and general service mechanics (8 employees).

The parties stipulated, and I agree, that employees in the following job classifications should be excluded from any bargaining unit found appropriate: railroad maintenance employees, railroad track maintenance employees, railroad operators, customer service representatives, professional

employees, foremen, general foremen, managers, and hourly and salaried supervisors. Further, no party seeks to include in the bargaining unit the material handlers employed at the Plaster City facility. Accordingly, I shall exclude these employees from the appropriate unit.

There is no bargaining history at either the Plaster City facility or the Quarry.

DETERMINATION

For the reasons discussed below, I find that the petitioned-for bargaining unit comprised of the employees employed at the Quarry is an appropriate bargaining unit and has not been effectively merged into a more comprehensive unit or so functionally integrated with the Plaster City facility that it has lost its separate identity. In reaching this decision, I note in particular the significant and substantial local autonomy of Quarry supervisors and managers over the terms and conditions of employment of Quarry employees, that the two facilities are geographically separated by approximately 25 miles, and that there is insufficient evidence of substantial employee interchange, contact, or community of interest to require that employees at the Plaster City facility be included in the bargaining unit of Quarry employees.

QUARRY OPERATIONS

At the Quarry gypsum rock is mined from the surface by blasting the solid gypsum rock with explosives. The Employer uses an independent contractor to drill the rock, to set the explosives, and to blast the gypsum rock from the ground surface.

After the explosives break the gypsum rock into pieces, the Employer's quarry operators drive heavy equipment including loaders, graders, and haul-trucks into the blasting area. The quarry operators grade blasted "fly rock" from the roads surrounding the blast area to clear the roads of blasted rock. The quarry operators load the gypsum rocks up to 42 inches in diameter into haul-trucks, and drive the haul-trucks loaded with gypsum rocks approximately 1 1/4 miles down a

“haul road”. At the end of the haul road, the quarry operators unload the gypsum rock either onto a stockpile of gypsum rocks or into a large crusher located in a building called the “crusher building”. The rock is separated by size and conveyed through a series of crushers that reduce it in size to 4 inches in diameter or less. In the scale house, quarry operators test samples of the rock to determine its properties. The properties of the rock determine the process and product production line to which the rock is directed.

Some of the gypsum rock mined at the Quarry is processed at the Quarry into salable products including: “Portland Cement” rock, also called “PC rock,” used in the manufacture of Portland Cement, and agricultural products called “agri” (a soil and livestock feed additive) and “aquacal” (a water or irrigation system additive). PC rock is gypsum rock of approximately 2 inches in diameter. The agricultural products are rock ground to a diameter of 1/8 inch or less. Quarry operators test the products made at the Quarry for purity, grind size, and sulfur and salt content. PC rock, agri, and aquacal produced at the Quarry are “bulk hauled” by truck out of the Quarry directly to the Employer’s customers. It does not appear that the Employer’s employees drive the trucks that haul the Employer’s product out of the Quarry to the Employer’s customers.

Gypsum rock that is not processed into salable products at the Quarry is loaded by quarry operators into a narrow gauge railroad that the Employer operates between the Quarry and the Plaster City facility. This railroad is used exclusively to transport gypsum rock to the Plaster City facility for further processing. The Quarry is the sole supplier of gypsum rock to the Plaster City facility. Trains on the railroad consist of 20-25 railcars, and each railcar has the capacity to carry 50 tons of rock. Three and sometimes four trains run from the Quarry to the Plaster City facility each day. Quarry employees do not operate or perform maintenance on the railroad. Rather, these functions are performed by employees of the Employer whom the parties stipulated out of the unit.

Quarry maintenance employees and the quarry electrician are responsible for the preventative and corrective maintenance required to keep the machinery at the Quarry in operation. The quarry electrician is included in the quarry maintenance department.

Currently there are two shifts at the Quarry: 6 a.m. to 4 p.m. and 3 p.m. to midnight, although in the past when production demands were high, the Quarry has operated on a 3 shift or 24-hour a day schedule.

PLASTER CITY FACILITY

1. Mill Area

Gypsum rock delivered to the Plaster City facility by narrow gauge railroad from the Quarry is emptied from the train cars in the rock-unloading shed at the Plaster City facility. Conveyors in the rock-unloading shed distribute the rock to storage silos in the rock storage area. From the rock storage area, gypsum rock is sent to a series of crushers in the crusher building where the gypsum rock is reduced to rocks 2 inches or less in diameter. The crushed rock to be sold as “PC rock” is separated and sent to the PC rock loading area for packaging. Gypsum rock is further crushed to produce the agricultural additives agri and aquacal. In the packaging area, PC rock, agri, and aquacal are packaged into 40, 50, and 80 pound bags for shipment to customers.

The mill portion of the Plaster City facility encompasses unloading the incoming gypsum rock, storing the rock, crushing the rock, processing the rock into PC rock, agri, aquacal, and other products, and the packaging department. The packaging department is divided into two parts: one where calcined or “cooked” products are packaged, and one where uncooked products are packaged. Employees classified as mill operators are responsible for the rock unloading, processing, and rock storage operations in the mill section of the Plaster City facility. Mill packing employees are responsible for the packaging of PC rock, agri, aquacal, and other products produced at the Plaster City facility. Mill maintenance mechanics are primarily responsible for construction, and for the preventative and corrective maintenance required to keep the equipment in the mill area in operation.

2. Plant Area

In the plant area of the Plaster City facility, gypsum rock is processed into wallboard used in construction. The gypsum rock is ground into the consistency of powder, “cooked” to remove water from the rock, and manufactured into wallboard on two production lines: production line 1 and production line 3. The finished wallboard is dried in a kiln, cut to length, bundled for shipment, and stacked in the warehouse to await shipment.

Production lines 1 and 3 maintenance employees operate the two production lines where wallboard is produced. Production line maintenance employees may also work in the packing area as needed.

3. Maintenance Function

Plant engineering maintenance employees are responsible for the preventative and corrective maintenance required to keep the equipment in the plant area in operation, but may also work in the mill area of the facility.

The plant engineering electricians are responsible for the maintenance of electrical equipment, including motors, the motor control center, the electrical substations, power distribution panels, air conditioners, water chillers, and lighting panels in the mill and plant areas of the Plaster City facility.

The plant engineering programmers are responsible for the computers used to operate the conveyors, crushers, and other equipment used in the Employer’s production processes.

As set forth in more detail below, plant engineering maintenance employees, plant engineering electricians, and plant engineering programmers may also be assigned work at the Quarry to perform installation of new equipment and corrective maintenance.

General Service mechanics, also called general service maintenance employees, are responsible for the waste haul of non-salable products at the Plaster City facility. They operate heavy equipment, loaders, dump trucks, water trucks, and back hoes. They haul non-salable product to a storage area or to a reclamation area at the Plaster City facility where the material is recycled. They are also responsible for maintenance of the water system, water pumps, and the air distribution system at the Plaster City facility.

Maintenance work for the Employer's narrow gauge railroad and machine work for the equipment at the Plaster City facility is performed in the main shop located at the Plaster City facility.

4. Quality Control Function

Quality technicians work throughout the Plaster City facility and are responsible for collecting samples of rock, testing the samples, testing the rock for purity, salts, reflectivity, grind size, solubility, and other properties, and performing quality control audits at the Plaster City facility. In addition, the quality technicians also test raw materials other than gypsum rock used in the manufacturing processes at the Plaster City facility. The quality technicians may occasionally help train quarry operators to perform testing functions. This training may occur at either the Plaster City facility or at the Quarry. Quality technicians do not perform testing functions at the Quarry.

5. Shipment of Finished Products

The finished products produced at the Plaster City facility are stored in a warehouse at that facility. Prior to shipment to customers, the products are loaded onto flat-bed trailers which are, in turn, loaded into railcars on a standard gauge rail line operated by Union Pacific Railroad which runs adjacent to the Plaster City facility. Some of the gypsum rock milled at the Plaster City facility is shipped by rail to another facility of the Employer located in Santa Fe Springs, where the rock is processed further. At the hearing, the Employer asserted that the location of

the Plaster City facility was determined by access at the Plaster City facility site to the standard gauge rail line operated by the Union Pacific Railroad. The Employer asserts that the Plaster City facility must be located on a standard gauge rail line in order to ship finished products to the Employer's customers, and that the absence of standard gauge rail service at the Quarry was the reason that the Plaster City facility was geographically separate from the Quarry.

The Plaster City facility operates 24 hours a day and has 3 work shifts, the hours of which vary slightly depending upon the starting times of various job classifications of employees employed at the Plaster City facility.

SUPERVISION

A single Human Resource Department is located at the Plaster City facility. It is responsible for both the Plaster City facility and the Quarry. Personnel files for employees at the Plaster City facility and at the Quarry are maintained in the Human Resource Department office. Human Resource Manager Keith Johnson has overall responsibility for hiring, training, safety compliance, employee benefits, and employee compensation at both the Plaster City facility and the Quarry. Under Johnson are Human Resource Supervisors Megan Spalding and Sunshine Dennis.

Bill Castrey is the Plant Manager and has overall responsibility for the operation of both the Plaster City facility and the Quarry. Directly under Castrey is Bruce Allen, Plant Operations Manager. Plant Manager Castrey makes the final decision on all terminations of employment at both the Plaster City facility and the Quarry.

Supervisors responsible for the operation of the Plaster City facility include: Steve Harris, Mill General Foreman, Peter Ekegren, Engineering Manager, Scott Seely, Environmental Railroad Manager, Jerry DeVore, Quality and Service Manager, Genaro Diaz, Quality Foreman, Ignacio Tapia Figueroa Jr., Line 1 Board Plant Maintenance Foreman, Paul Bullock, Manager, Don

Murphy, Foreman of Mill Maintenance, Porfirio Mendez, Packing Foreman, Lesley Moore, Packing Department Manager and Mill Manager, Leo Sattle, Hourly Packing Supervisor, unnamed supervisors over the Line 3 Board Plant function, and an unnamed maintenance supervisor.

The following management officials are responsible for the operation of the Quarry: Jamie Mitchell, Quarry Manager, Tom Brown, Quarry General Foreman, and Brent Fauble, Quarry Maintenance Foreman. In addition, the Quarry has two hourly Quarry supervisors, whose names are not reflected in the record. The highest management official at the Quarry is Quarry Manager Mitchell. Mitchell reports to Bruce Allen, Plant Operations Manager.

Although the parties stipulated that foremen, general foremen, managers, and hourly and salaried supervisors should be excluded from any bargaining unit found appropriate, they did not stipulate to the exclusion of any supervisor by name. However, it appears that both parties contend that the above-named individuals are supervisors within the meaning of Section 2(11) of the Act and that both parties intended to exclude the above-named individuals from any bargaining unit found appropriate. Based on the record evidence, I find that the individuals named above are supervisors within the meaning of Section 2(11) of the Act, and I shall exclude them from the bargaining unit found appropriate.

HUMAN RESOURCE DEPARTMENT FUNCTIONS

The Human Resource Department collects applications for employment at the Plaster City facility or at the Quarry and administers a screening test to all applicants consisting of practical arithmetic, following policies and procedures, and work and safety. The Human Resource department determines the location or job position for which the applicant will be considered. Applicants for job positions at the Quarry are initially interviewed by Human Resource Supervisor Spalding at the Quarry, and then by Quarry management. No specialized educational

or work experience requirements are needed for the production departments at either the Plaster City facility or the Quarry. In the event the applicant passes the initial interview conducted by Spalding and the Quarry manager, and a background check, the applicant is interviewed by a committee comprised of Quarry employees.

Similarly, Human Resource Supervisor Dennis screens applicants considered for positions at the Plaster City facility. The Plaster City facility applicants are interviewed by Dennis and Plaster City management officials, and a committee comprised of Plaster City facility employees. The foregoing establishes that the final decision on hiring is made separately by personnel at the Quarry and at the Plaster City facility.

The Employer's written rules, policies, safety and accident prevention policies apply to both the Plaster City facility and the Quarry. Vacation, holiday and fringe benefits are the same at both facilities and are consistent with policies established on a corporate-wide basis. Both the Quarry and the Plaster City facility are on the same weekly payroll, and use common forms for disciplinary and other personnel actions. Since management is permitted some flexibility in the structuring of forms, the transfer form used at the Plaster City facility differs slightly from the form used at the Quarry.

A common operator program establishes steps for each job classification and the requirements for each step. The starting wage rates for production operators at the two facilities are the same and progress through the same step levels. However, the skill requirements for operators at the Quarry and at the Plaster City facility differ somewhat so that an operator transferring from one facility to the other may need to master new skills in order to retain their previous pay level. Similarly, maintenance employees at the two facilities are subject to the same pay grades, although there appear to be higher maintenance grades in some areas of the Plaster City facility than at the Quarry. Maintenance employees at the Plaster City facility are required to learn maintenance procedures on equipment at the Quarry in order to progress through the maintenance step levels and to be promoted to higher pay levels. Similarly, plant engineering electricians are required to learn electrical procedures and troubleshooting of the electrical

systems for the equipment at the Quarry in order to progress through their step levels. The record does not contain evidence that the two facilities have common seniority.

A common orientation meeting is conducted each Monday at the Plaster City facility for all new hires, including Quarry employees. Supervisors from both the Quarry and the Plaster City facility meet monthly at the Plaster City facility to discuss safety issues. Employee safety meetings are conducted separately at the Plaster City facility and at the Quarry. The Plant Manager and the Human Resource Director conduct separate quarterly employee meetings at each facility, but the content of the meetings held at the two facilities is identical. The Employer holds an annual event such as a company picnic that includes employees from both the Quarry and the Plaster City facility.

The Human Resource supervisor assigned to the Quarry spends one day a week at the Quarry in order to be available to talk to employees about benefit issues or other concerns, and to update the informational bulletin boards at the Quarry. In addition, Quarry employees may come to the Human Resource Department office at the Plaster City facility in order to meet with Human Resource Department personnel.

AUTHORITY OF QUARRY MANAGEMENT

Quarry supervisors schedule work hours and vacations for quarry employees, determine verbal and written disciplinary actions up to and including 3 day suspensions, deliver disciplinary actions to the employee and discuss disciplinary actions with the employee, make recommendations regarding termination to the Plant Manager via the Human Resource Department, and determine whether quarry employees are sufficiently proficient to move to a higher level in the operator rate program which entails an increase in pay and promotional opportunities. In making determinations regarding employee qualifications, the Quarry supervisors may have input from Jerry De Vore, Quality and Service Manager at the Plaster City facility, regarding whether the Quarry operators have met the requirements for performing

quality control testing of samples required to move to the next step of the operator rate program. However, DeVore does not have input into non-testing criteria of the quarry operator rate program. In addition, Quarry management and DeVore have dual authority to discipline Quarry operators for quality control testing failures. However, the record contains no evidence that DeVore has, in fact, disciplined any quarry operator because of a testing failure.

Pursuant to company-wide policy established by the Employer's Human Resource Department, employees contact their immediate supervisors to report their inability to work due to illness. Thus, Quarry employees report their absences from work because of sickness to their immediate supervisor at the Quarry.

TRANSFERS / EMPLOYEE INTERCHANGE

1. Permanent Transfers

The record evidence reflects that four permanent transfers of employees have occurred between the Quarry and the Plaster City facility in the past 3 years. Two permanent transfers occurred in 1999 and both transfers involved Plaster City facility employees who transferred to the Quarry to work as quarry operators. Two additional permanent transfers occurred in 2000: the transfer of a quarry operator to the Plaster City facility to work as a mill operator, and the transfer of a Plaster City facility employee to a quarry operator position.

A transferred employee retains his pre-transfer wage level for 6 months, during which time he is expected to meet the training requirements of the new position. In the event that the transferred employee does not meet the training requirements of the new position within 6 months, his wage level is lowered.

2. Temporary Transfers/Interchange

a) Plaster City Facility Employees to Quarry

Because only a small maintenance group is located at the Quarry, and on an as-needed basis, plant engineering and mill maintenance employees from the Plaster City facility go to the Quarry to modify equipment, to install new equipment, and to perform corrective maintenance on equipment located at the Quarry. Plaster City facility employees do not go to the Quarry to perform preventative maintenance on equipment at the Quarry.

The decision to bring Plaster City facility employees to the Quarry is made through consultations between the respective managers of the Plaster City facility and the Quarry and an overall operations manager after a request for assistance is made by the Quarry manager. The selection of employees from the Plaster City facility to work at the Quarry is made by Plaster City facility supervisors.

Particularly on large jobs lasting several days, maintenance supervisors from the Plaster City facility go to the Quarry with the Plaster City facility plant engineering and mill maintenance employees and supervise their work at the Quarry. On smaller jobs consisting of a single day or shift, Plaster City facility supervisors generally do not go to the Quarry and the Plaster City facility maintenance employees are supervised by Quarry maintenance management personnel during the time that they work at the Quarry.

Plaster City facility Engineering Manager Peter Ekegren estimated that, in the past 6 months, plant engineering maintenance employees had worked at the Quarry at least once a week, and sometimes as long as 3-4 days a week, and that there were 6-7 separate maintenance projects at the Quarry on which plant engineering maintenance employees had worked, including: finishing the installation of a crusher installed at the end of 2001, modifying a dust collector, modifying discharge chutes, fixing a damaged crusher machine, repairing a mechanical sampler machine, and repairing the screen on a dust collector. Generally, plant engineering maintenance

employees do not work with quarry maintenance employees when they perform work at the Quarry.

Ekegren testified that plant engineering electricians do not work at the Quarry as often as the plant engineering maintenance employees. Ekegren estimated that on 6 to 7 occasions in the past 6 months, plant engineering electricians were assigned work at the Quarry including installing new equipment and new lights, connecting new motors, and laying new electrical conduit. Moreover, since the single electrician employed at the Quarry works on the day shift, a plant engineering electrician handles any emergencies that arise at the Quarry when the quarry electrician is off-duty. Generally the plant engineering electrician's work at the Quarry is supervised by Plaster City facility supervisors who go with the plant engineering electricians to the Quarry on larger jobs. On smaller jobs the plant engineering electricians working at the Quarry are supervised by Quarry supervisors. Quarry supervisors may provide feedback to the plant maintenance supervisors regarding the work performance of Plaster City facility employees at the Quarry. However, there is no evidence that any Quarry supervisor has ever disciplined a Plaster City facility employee. Plant engineering electricians may work alongside the quarry electrician in performing work at the Quarry.

Ekegren testified that plant engineering programmers go to the Quarry at least once a week to fix problems with the computers used to operate machinery at the Quarry. However, the plant engineering programmers are usually able to fix the problems within a few hours and do not generally work at the Quarry for an entire shift.

Mill operators and mill packing employees do not go to the Quarry to perform work.

When the Plaster City facility employees perform work at the Quarry, they utilize the same parking areas and breakroom used by the Quarry employees. When Plaster City facility plant engineering and mill maintenance personnel work at the Quarry they generally have some contact with Quarry employees and Quarry supervisors even when Plaster City facility management officials accompany them. The Plaster City facility employees and supervisors

confer with the Quarry employees and Quarry supervisors to determine the problem with the machinery, to ensure that the equipment is effectively shut down when the Plaster City facility employees are working on it, and to utilize the Quarry employees' greater familiarity with the equipment.

b) Quarry Employees to Plaster City Facility

The Employer estimated that several times in the past year, quarry operators were sent from the Quarry to the Plaster City facility to help mill operators unload rock when unforeseen circumstances threatened an interruption or delay in supplying rock to the Plaster City facility. In addition, if the narrow gauge train running from the Quarry to the Plaster City facility derails, quarry operators help place the train back on the tracks and load rock into the railcars.

In addition, since approximately the spring of 2002, most weeks, a quarry mechanic works a 10-hour shift a week at the Plaster City facility to help with routine maintenance on wallboard production line 3. The quarry mechanics sent to the Plaster City facility vary from week to week. When working at the Plaster City facility, the quarry mechanic is supervised by Plaster City facility supervisors and works with plant engineering maintenance employees.

SIMILAR FUNCTIONS

Similar equipment, including loaders, haul-trucks, and crushing machinery is used at both the Quarry and the Plaster City facility. Both facilities have similar electrical, water, and mechanical systems, and produce some of the same products although no "cooked" product or wallboard is produced at the Quarry.

The job functions of quarry operators are similar to the functions performed by mill maintenance employees. Moreover, quarry operators are required to perform initial sampling and testing

procedures on the rock that are similar to the testing procedures performed by quality technicians at the Plaster City facility. Quarry operators are trained in sample testing procedures by supervisors from the Plaster City facility who come to the Quarry to train the quarry operators. In addition, quarry operators go to the Plaster City facility for training with quality technicians employed at the Plaster City facility. Quarry operators, quality technicians, and quality department supervisors may consult on the phone in the event of a problem with test results. Quality technicians from the Plaster City facility do not generally go to the Quarry to work, although they may occasionally initiate new testing procedures at the Quarry and train quarry operators in the new testing procedures. Mill operators employed at the Plaster City facility also perform some testing functions similar to those performed by quarry operators and by quality technicians.

The quarry operators use water trucks similar to those used at the Plaster City facility by the general service mechanics. Quarry mechanics maintain and repair the water and compressed air systems used at the Quarry which are similar to the systems used at the Plaster City facility and which are maintained by the general service mechanics.

All quarry employees are required to have completed a Mine Safety and Health Certification (MSHC) course. The plant engineering maintenance employees, plant engineering electricians, train operators, and mill operators are required to complete the MSHC course if they work at the Quarry longer than 5 days.

ANALYSIS

It is well established that a bargaining unit sought by a petitioner need not be the only appropriate union or even the most appropriate unit, but only that it be an appropriate unit which will “assure to employees the fullest freedom in exercising the rights guaranteed by this Act”. Sohio Natural Resources Company, 237 NLRB 1261, 1262 (1978); Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 272 (7th Cir. 1951).

In addition, the Board has consistently adhered to the principle that a single-location or facility unit is appropriate unless it has been so effectively merged into a more comprehensive unit, or so functionally integrated, that it has lost its separate identity. D & L Transportation, Inc., 324 NLRB 160 (1997); J & L Plate, 310 NLRB 429 (1993); Dixie Belle Mills, 139 NLRB 629, 631 (1962). The party seeking a multiple location unit bears the burden of overcoming the presumption. Courier Dispatch Group, Inc., 311 NLRB 728 (1993); General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908, 910 (1990); Kapok Tree Inn, 232 NLRB 702, 703 (1977).

To determine whether the presumption has been rebutted, the Board looks at such factors as centralized control over daily operations and labor relations, extent of autonomy in the local manager to handle the facility's day-to-day ordinary operations and to supervise the employees' day-to-day work, similarity of skills, functions, and working conditions, extent of employee interchange, geographic proximity, and bargaining history, if any. Rental Uniform Service, Inc., 330 NLRB 334, 335 (1999), citing D & L Transportation, Inc., supra; Office Depot, Inc. v. NLRB 184 F.3d 506 (6th Cir. 1999).

The Board stated in New Britain Transportation Co., 330 NLRB 397 (1999), at 397: "Centralized control over personnel and labor relations alone, however, is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations." Accord, D & L Transportation, supra, at 160-161, where the Board held that centralized policies and procedures, centralized administration of certain aspects of the business including involvement in formal discipline and wage increases was insufficient to rebut the single facility presumption where local management made hiring decisions, assigned work, determined time off, and issued minor discipline.

1. Autonomy of Quarry Management

Although the Employer maintains central control of aspects of labor relations, there is clear evidence of significant and substantial local autonomy of Quarry managers over the labor relations and terms and conditions of employment of employees employed at the Quarry. Thus, five Section 2(11) supervisors are stationed at the Quarry to supervise the day-to-day work of approximately 25 employees. The Quarry management and supervisors control labor relations with regard to the Quarry employees including: involvement in the hiring process and selection of employees for hire, disciplinary actions up to and including 3-day suspensions, recommendations regarding termination of employment, evaluation of work performance and promotion to higher wage levels, employee work and vacation schedules, and employee work assignments.

The type of personnel and labor relations matters for which the Quarry supervisors and management are responsible are considered significant in determining the issue of local autonomy over labor relations. See Rental Uniform Service, supra at 335-336, citing Bowie Hall Trucking, 290 NLRB 41, 43 (1988) (local terminal manager, who conducted initial screening for new hires and was consulted about major disciplinary decisions, made more than routine decisions, notwithstanding that central management had final authority with respect to hiring and major disciplinary decisions).

Indeed, in cases where the Board has found that multiple facilities must be included in a single bargaining unit, the lack of separate local supervision at one of the facilities is a decisive factor. See R & D Trucking, Inc., 327 NLRB 531 (1999); Waste Management of Washington, Inc., d/b/a Waste Management of Northwest, 331 NLRB 309 (2000). In cases where significant local supervisory autonomy exists at each of several facilities, the Board has generally held that the presumption that a single facility is an appropriate bargaining unit has not been rebutted. See Rental Uniform Service, Inc., supra; New Britain Transportation Co., supra; J & L Plate, Inc., supra. (But also see Rinker Materials Corporation, 294 NLRB 738 (1989) in which the Board determined that, despite the employer's reorganization of its operations, an established

bargaining unit consisting of production and maintenance employees remained a separate appropriate bargaining unit despite the absence of separate supervision.)

Thus, the fact that the Quarry has separate supervision and that the Quarry supervisors and managers exercise significant autonomy over the terms and conditions of employment of the Quarry employees is a strong factor supporting the appropriateness of the petitioned-for bargaining unit.

2. Skills and Job Functions

Although the job skills and equipment used by the employees at the Quarry and at the Plaster City facility are similar, they are not identical. There are differences in the products produced at the two facilities and, accordingly, there are some differences in the production processes, equipment and machinery used at each facility. There is no evidence of common seniority between the Quarry and the Plaster City facility.

3. Employee Interchange

a) Permanent Transfers

There have only been four permanent transfers between the Quarry and the Plaster City facility in the past 3 years. All four transfers were made at the request of the employee. The four transfers all occurred before 2001 and there is no record of any permanent transfers between the two facilities occurring in 2001 or 2002. Generally, employee interchange made at the request of the employee is not entitled to much weight in determining the scope of the appropriate unit. See Bowie Hall Trucking, supra at 43; Penn Color, Inc., 249 NLRB 1117, at 1119 (1980); The Black and Decker Manufacturing Company, 147 NLRB 825 (1964) at 827, fn. 3.

b) Temporary Interchange

With regard to temporary interchange of employees, most of the interchange between the two facilities occurs because Plaster City facility maintenance employees, including plant engineering maintenance employees, plant engineering electricians, and plant engineering programmers are responsible for the performance of maintenance work at the Quarry. However, in performing maintenance work at the Quarry, Plaster City facility employees are frequently accompanied by Plaster City supervisors and management personnel who supervise their work at the Quarry. As acknowledged by Plaster City facility Engineering Manager Ekegren, while performing maintenance work at the Quarry, plant engineering maintenance employees generally do not work with Quarry maintenance employees. Similarly, although plant engineering electricians assigned to work at the Quarry may work with the quarry electrician, it appears that the plant engineering electricians often work at the Quarry when the quarry electrician is not on duty. It does not appear that plant engineering programmers performing maintenance work at the Quarry routinely work with Quarry employees. Most maintenance work performed by Plaster City facility employees at the Quarry appears to be supervised by Plaster City facility supervisors who go to the Quarry with their work crew rather than Quarry supervisors. The fact that Quarry supervisors and managers do not supervise much of the maintenance work performed by Plaster City facility employees at the Quarry undermines the showing of employee interchange or contact. See New Britain Transportation Co., supra, at 398.

The five quarry maintenance employees take turns working a 10-hour shift once a week at the Plaster City facility while under the supervision of Plaster City maintenance supervisors.

c. Evaluation of Interchange Evidence

The evidence submitted by the Employer regarding employee interchange was not specific with regard to employee hours or employee contact, and did not supply the context needed to assess or evaluate the amount of contact between employees as a percentage of the total employee complement. The failure to submit evidence of context to evaluate the claims of employee

interchange undercuts the Employer's contention that the Plaster City facility must be included in the petitioned-for bargaining unit. See New Britain Transportation Co., supra, at 398, and cases cited in that decision.

Even if the Employer had submitted more specific evidence of employee interchange and context regarding interchange, it does not appear that the record evidence establishes the degree of significant employee interchange present in cases where two locations are combined into a single bargaining unit over the petitioner's objection. See New Britain Transportation Co., supra, at 398, citing Purolator Courier Corp., 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other branches on a daily basis and there existed a greater degree of supervision from supervisors at other terminals than from the supervisors at their own terminals); Dayton Transport Corp., 270 NLRB 114 (1984) (Board found the presumption rebutted where in 1 year there were approximately 400-425 temporary employee interchanges between terminals among a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the point of dispatch).

I find that the amount of interchange between employees at the Quarry and the Plaster City facility does not establish such significant contact or community of interest between the two groups of employees as to rebut the single facility presumption. Thus, it is clear that employees in some job classifications such as quarry operator, mill operator, mill packing employee, production line maintenance employee, and general service mechanics are rarely in contact or work with employees from the other facility. Rather, the employee interchange that occurs is limited to maintenance employees, and with the exception of the quarry maintenance employee who goes to the Plaster City facility each week to work a 10-hour shift, it does not appear that employee interchange entails a great deal of contact between employees at the two locations.

4. Cases Relied Upon By Employer Are Distinguishable

The facts in the instant case are distinguishable from those in Exxon Company, U.S.A., 225 NLRB 10 (1976) and South-East Coal Company, 138 NLRB 562 (1962), relied upon by the

Employer to support its position that only a bargaining unit consisting of the Plaster City facility and the Quarry is appropriate. As stated by the Board in Sohio Natural Resources Company, supra, at 1262, the facts in Exxon established the presence of “considerable interchange of jobs among employees and frequent contact both on and off the job among all employees on a daily basis” (emphasis supplied). As stated above, the facts in the instant case fail to establish the degree of employee interchange and contact present in Exxon. In Sohio, the Board found that the petitioned-for unit of mill and other surface production and maintenance employees, including warehouse employees at the employer’s uranium operations in Seboyeta, New Mexico, was a separate appropriate bargaining unit, and it rejected the employer’s contention that the appropriate bargaining unit must include employees working in a mine at the site. In Sohio, the Board found that the mill employees formed a homogeneous grouping of employees who had a sufficient community of interest to justify a bargaining unit apart from the underground mine employees where, inter alia, there was *de minimis* employee interchange and lack of contact between the two groups. Thus, the contention made by the Employer here that a processing plant must be included in the same bargaining unit as the mine or quarry that supplies raw material to it was rejected by the Board in Sohio.

In the second case relied upon by the Employer, South-East Coal, supra, the petitioner sought an employer-wide bargaining unit consisting of employees at three separate coal mines and a processing plant. The employer there sought to exclude the processing plant from the bargaining unit. The Board found that an overall bargaining unit was appropriate based on prior bargaining history that included the three mines and a predecessor processing plant in a single unit. The prior bargaining history, as well as the petitioner’s request for an overall bargaining unit, distinguish South-East Coal from the instant case.

Finally, the facts in the instant case are distinguishable from those in Novato Disposal Services, Inc., 328 NLRB 820 (1999), in which the Board found that the employer had sufficiently rebutted the presumption that a single facility consisting of a unit of drivers at the employer’s Petaluma facility was appropriate and remanded the case to the Regional Director for determination of which of the employer’s multiple locations were appropriately grouped in a

bargaining unit including the Petaluma facility. In Novato, the Board found identical work functions, common seniority among the Employer's multiple facilities, a high degree of central control over labor relations, common supervision among the employer's multiple work sites, and a significant degree of contact and interchange among employees, including both permanent transfers and frequent temporary interchange. Moreover, in Novato, there was no evidence of separate supervision among the employer's multiple sites. Rather, it appeared that the two owners supervised all of the sites. In contrast to the facts in Novato, the evidence in the instant case clearly establishes that local management has autonomy over significant terms and conditions of employment of the Quarry employees, the work functions at the two facilities are not identical, and there is no common seniority. Significantly, the record does not establish a substantial degree of employee interchange or contact.

Accordingly, the record evidence is insufficient to establish that employee interchange and contact is of a sufficient degree to require that the Quarry and the Plaster City facility must be included in a single bargaining unit.

5. Geographical Separation, Bargaining History

The two facilities are geographically 25 miles apart. There is no bargaining history that includes employees of both facilities in a single unit and no labor organization seeks to include employees employed at the two facilities in a single bargaining unit. These factors support a finding that employees employed at the Quarry constitute a separate appropriate bargaining unit.

CONCLUSION

Based on all the reasons set forth above, and noting in particular evidence of local autonomy of Quarry supervision and management in decisions affecting the terms and conditions of employment of Quarry employees, the 25 miles that separate the two facilities, and insufficient evidence of degree, scope, and frequency of employee interchange to establish that the two locations must be included in a single bargaining unit, I find that the record evidence fails to

establish that the petitioned-for bargaining unit of employees employed at the Quarry has been effectively merged or functionally integrated with the Employer's Plaster City facility so that the Quarry has lost its separate identity. Accordingly, I find that the petitioned-for bargaining unit comprised of employees employed at the Employer's Quarry is an appropriate bargaining unit and I shall direct an election in that unit.

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